

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 8, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the tentative ruling is effective immediately. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

***Please note that the hearing time for all matters set to be heard in Department Fifteen on April 8, 2009, has been changed from 9:00 a.m. to 1:30 p.m.**

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: Barr v. Regents of The University of California
Case No. CV CV 08-2136

Hearing Date: April 8, 2009 Department Fifteen 1:30 p.m.

Defendant Regents of the University of California's requests for judicial notice are **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiff Cheri Barr's motion for leave to file a Second Amended Complaint ("SAC") is **DENIED**. (Code of Civ. Proc., §§ 425.10 & 473; Cal. Rules of Court, rules 3.1110 et seq. & 3.1324.) The motion does not comply with Code of Civil Procedure section 425.10 and California Rules of Court, rules 3.1110 et seq. and 3.1324. The procedural defects in the motion preclude the Court from reaching, or even identifying, the substantive merits of the motion.

This Court previously denied plaintiff's motion for leave to file a SAC on February 4, 2009, because the motion was procedurally deficient and the SAC included causes of action that the Court ruled on December 3, 2008, were sustained without leave to amend. The present motion is even more procedurally deficient than the previous motion in that it **does not attach the proposed SAC, nor does it include the required supporting declaration or the required separate memorandum of points and authorities**. Rather, all three documents are combined into one, resulting in a very confusing document. It is the plaintiff's right to represent herself in this action, however, the Court is concerned that her continued inability to comply with the Code of Civil Procedure and the California Rules of Court may impede her ability to have her case heard on its merits. The Court cannot act as counsel for unrepresented litigants, and must apply the rules of procedure to all parties equally. Plaintiff might consider retaining counsel."

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: **Clergen v. Woodland Joint Unified School District**
Case No. CV CV 08-2136

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

Defendant's unopposed demurrer to the fifth cause of action for loss of consortium is **MOOT**. (Dismissal with prejudice of the fifth cause of action for loss of consortium filed on February 10, 2009.)

Defendant's motion to strike portions of plaintiff's complaint is **GRANTED IN PART**. (Code Civ. Proc., §§ 435.10, subd. (a)(2) & 436.) Defendant's motion to strike the prayer for punitive damages and supporting allegations found in paragraphs 32, 40, 49 and 59 is **GRANTED**. The motion to strike the allegations of failure to prevent discrimination, harassment and retaliation found in the first, second and third causes of action on the grounds that the allegations are barred by the one year statute of limitations and/or are irrelevant, false and improper is **DENIED**. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798; *Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280; *Quelimane Co., Inc. v. Stuart Title Guar. Co.* (1998) 19 Cal.4th 26.)

Defendant's requests for judicial notice are **GRANTED**. (Evid. Code, §§ 451 & 452.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: **Compromise of Canchola**
Case No. CV P2 06-261

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

The petitioner and the minor are **DIRECTED TO APPEAR**.

TENTATIVE RULING

Case: **Metz v. Treacy**
Case No. CV CV 09-21

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

Defendant's unopposed demurrer to the first cause of action for breach of contract is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff failed to allege facts sufficient to state a cause of action for breach of contract. (4 Witkin Cal. Procedure (5th ed 2008), Pleading § 515 p. 648.)

Defendant's motion to strike the second cause of action for punitive damages is **GRANTED WITHOUT LEAVE TO AMEND**. Punitive damages are not recoverable on a cause of action for breach of contract. (Code Civ. Proc., § 436; Civ. Code, § 3294; Cal. Rules of Court, rule 3.1322(a); *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 680.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: **The Humane Society of the United States v. The Regents of the University of California, et al.**
Case No. CV PT 08-2337

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

Pursuant to the Court's March 11, 2009, order and the stipulation and order filed on March 20, 2009, the parties submitted their nominees for referee and objections to the nominees submitted by the other side. The parties have also filed proposed orders of appointment.

Having considered all matters submitted, the file in this case, and the applicable law, the Court **HEREBY ORDERS:**

Pursuant to Code of Civil Procedure sections 639, subdivision (a)(4) and 640 and this Court's March 11, 2009, order, the Court appoints the **Honorable Christopher C. Cottle** (State Bar No. 39037) to act as Special Master for the limited purposes described in this order and any further order by this Court. The contact information for the Special Master is:

ADR Services, Inc.
50 Fremont Street, Suite 2110
San Francisco, California 94105
Telephone: (415) 772-0900
Facsimile: (415) 772-0960
Attn: Case Manager Erica Amos

Respondent The Regents of the University of California seeks to exempt from disclosure under the California Public Records Act documents relating to three categories of communications: (1) communications between members of the University of California Agricultural Issues Center ("AIC") research team, (2) communications between members of the AIC research team and members of the AIC Board of Advisors, and (3) communications between members of the AIC research team and outside parties. The Court will balance the relevant interests for each category of public records withheld by the respondent. The duties and powers of the Special Master are set forth herein.

1. The Special Master shall review *in camera* all documents the respondent is withholding from the petitioner for the purpose of identifying any withheld documents that relate to the

petitioner's claim that the egg and/or poultry industry influenced the conduct or result of the study entitled "Economic Effects of Proposed Restrictions on Egg-laying Hen Housing in California," published by the AIC in July, 2008.

2. The Special Master shall supervise, plan, coordinate and determine the procedure for all matters related to his review, for the efficient management of the case and as the Special Master deems appropriate. To aid his determination, the Special Master may require the respondent to provide biographical information for each person who authored, received and/or is referenced in a communication that the respondent is withholding from disclosure and an index identifying each page where each name appears.

3. Within thirty (30) days of the date of entry of this order, the Special Master shall report the status of the matter in writing to the supervising judge,¹ including the procedure adopted by the Special Master, the deadline for the respondent to submit documents to the Special Master, and the deadline for the submission of the Special Master's written report and recommendations.

4. The Special Master shall forward the documents he has reviewed to the Court and provide the Court and counsel for the parties with his written report and recommendations. The report must specify the documents (by Bates-stamp or other means of specific identification) that the Special Master recommends be disclosed to the petitioner.

5. Any party that opposes the recommendations of the Special Master shall file with the Court a statement of opposition together with points and authorities in support thereof, and serve a copy of such papers on the Special Master and all counsel of record within fourteen (14) days of the date of the Special Master's written report and recommendations. Failure to file a statement of opposition shall be deemed a waiver of objections to the Special Master's recommendations.

6. The Special Master may recommend reasonable appropriate sanctions for the failure of any person, party, counsel or representative of a party to cooperate with the Special Master, as appropriate under provisions of any applicable statute or rule of court.

7. The fees of the Special Master shall be billed at \$400 per hour. The fees and costs of the Special Master shall be paid by the respondent. The petitioner shall not be required to pay any portion of the Special Master's fees and costs. (Govt. Code, § 6253, subd. (b); *North County Parents Organization for Children with Special Needs v. Dept of Education* (1994) 23 Cal.App.4th 144.)

¹ This matter has been assigned to the judge in Department 15, which is Judge Kathleen M. White until May 1, 2009, and Judge Janet Gaard after May 1, 2009. Department 15 is located at 1100 E. Main Street, Woodland, CA 95695 – it is not in the main court house. All mail should continue to be directed to the main court house to Yolo Superior Court, Civil Filings Room 103, 725 Court St., Woodland, CA 95695. Hearings will occur in Department 15.

If no hearing is requested, the Court will prepare an order consistent with this ruling and serve the parties and the Special Master with a copy of the order.

TENTATIVE RULING

Case: **Kava v. Morrison Homes, Inc. et al.**
Case No. CV CV 07-2809

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

Zurich North America's unopposed motion to intervene as a matter of right under Code of Civil Procedure section 387, subdivision (b) is **GRANTED**. (*Reliance Ins. Co. v. Superior Court of Santa Clara County* (2000) 84 Cal.App.4th 383.) Zurich North America shall file its complaint in intervention by April 10, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Selby v. Winnebago**
Case No. CV CV 07-496

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

The matter is **CONTINUED** on the Court's own motion to June 3, 2009 at 9:00 a.m. in Department 15.

TENTATIVE RULING

Case: **Wheeler v. Morrison Homes, Inc. et al.**
Case No. CV CV 08-49

Hearing Date: **April 8, 2009** **Department Fifteen** **1:30 p.m.**

Financial Pacific Insurance Company's unopposed motion to intervene as a matter of right under Code of Civil Procedure section 387, subdivision (b) is **GRANTED**. (*Reliance Ins. Co. v. Superior Court of Santa Clara County* (2000) 84 Cal.App.4th 383.) Financial Pacific Insurance Company shall file its complaint in intervention by April 10, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.